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Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET INC., a Delaware corporation,

Defendant.

**PLAINTIFF BLENDTEC INC.’S
MOTION RELATED TO SCOPE OF
EMAIL DISCOVERY**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Blendtec served ESI Discovery Requests on November 7 (**Exhibit 1**). Blendjet responded on December 7 (**Exhibit 2**) without any production. On December 8, Blendtec advised Blendjet that its attempt to limit its email production was improper (**Exhibit 3** at ¶2). Blendtec’s counsel (Brett Foster and Tammy Kapaloski) conferred telephonically with Blendjet’s counsel (Patrick McGill and Nathan Thomas) on December 19 (1:30 p.m.).

ESI Protocol Paragraph 35 requires only that “email production requests shall identify the custodian, search terms, and the time frame for the documents sought.” ECF 33, ¶35. Despite that,

Blendjet states that it will only produce responsive emails if they are also “within the scope of Blendjet’s agreements to produce in its Responses, which it hereby incorporates by reference.” Exh. 2 at 3-4. Blendjet defines its “Responses” as “all of Blendjet’s responses and objections (*both present and future*) to any and all of Blendtec’s outstanding requests for production.” *Id.* at 3 (emphasis added). This is improper. First, Blendjet is incorporating unknown objections (“both present and future”) in violation of Rule 34 (which requires specifically stated objections) and ESI Protocol ¶38 (which requires objections to be made within 5 days of receiving search terms). Next, instead of producing emails that include Blendtec’s search terms, as required by the ESI Protocol, Blendjet has stated that it will “refuse production of any email custodial ESI . . . to the extent that such email documentation falls outside the scope of documents Blendjet has agreed to produce in its Responses.” Exh. 2 at 6.

Blendtec’s search terms are narrow and clearly relevant. *See Exhibit 4* (search terms correlated with corresponding RFPs). Blendtec has propounded email requests in accordance with the ESI Protocol and the email requests fall within discovery that Blendtec has otherwise sought. *Id.* It is improper for Blendjet to unilaterally limit production of responsive emails to what it “has agreed to produce in its Responses.” Further, Blendjet has produced *very little* in response to Blendtec’s RFPs and its determination of what “it will agree to produce” has seriously impaired Blendtec’s discovery efforts.¹ Blendjet should not be permitted to carry its deficient discovery responses forward into all aspects of discovery.

In any event, Blendjet waived any objections it had to the scope or relevance of Blendtec’s

¹ Blendtec contemporaneously files a motion related to Blendjet’s Responses to Blendtec’s First Set of Rule 34 RFPs.

search terms because it failed to raise them within 5 business days of receiving the search terms as required by the ESI Protocol. ECF 33, ¶38 (“If the Producing Party objects to the Search Terms provided by the Requesting Party, the Producing Party must identify its objections within five (5) business days of receiving the Search Terms or any objections are waived.”).

Blendjet failed to state when it would produce responsive emails. Blendtec should be ordered to produce emails within 20 days of the date of any order on this motion.

DATED this 6th day of January, 2023.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

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Attorneys for Plaintiff Blendtec Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2023, a true and correct copy of the foregoing document was served on counsel of record via the Courts CM/ECF System which sent notice to counsel of record:

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